

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

CLINTON O. WITHROW and)
MARTHA C. WITHROW,)
Plaintiffs)

v.)

No. 3:04-cv-546

FIRST TENNESSEE BANK)
NATIONAL ASSOCIATION, *et al.*,)
Defendants)

MEMORANDUM AND ORDER

This diversity action arises out of the sale and financing of rental property in the Lone Branch Resort of Sevier County, Tennessee, and raises theories of fraud, negligent misrepresentation, violations of the Tennessee Consumer Protection Act, civil conspiracy, negligence, breach of fiduciary duty, appraiser liability, and surveyor liability. Currently pending is the motion for summary judgment of defendants First Tennessee Bank National Association and First Horizon Home Loan Corporation [Court File #58].

Upon a careful review of the record, the court finds that there are multiple issues of material fact which remain to be determined including: (1) whether

statements made by defendants' agents were misrepresentations or mere statements of opinion; (2) whether the plaintiffs relied upon any of these alleged misrepresentations; (3) whether circumstances existed which may have created a fiduciary relationship between the defendants and the plaintiffs; and (4) whether plaintiffs suffered any damages proximately caused by these defendants.

Accordingly, the motion for summary judgment [Court File #58] is hereby DENIED.

ENTER :

s/ Thomas W. Phillips
UNITED STATES DISTRICT JUDGE